



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Nos. FTA-2014-0024, FTA-2014-0003, FTA-2012-0045]

Americans with Disabilities Act: Final Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of final circular.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its website, guidance in the form of a Circular to assist grantees in complying with the Americans with Disabilities Act (ADA). The purpose of this Circular is to provide recipients of FTA financial assistance with instructions and guidance necessary to carry out the U.S. Department of Transportation's ADA regulations.

EFFECTIVE DATE: The final Circular becomes effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For program questions, Dawn Sweet, Office of Civil Rights, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E54-306, Washington, D.C., 20590, phone: (202) 366-4018, or e-mail, dawn.sweet@dot.gov. For legal questions, Bonnie Graves, Office of Chief Counsel, same address, Room E56-306, phone: (202) 366-4011, fax: (202) 366-3809, or e-mail, bonnie.graves@dot.gov.

SUPPLEMENTARY INFORMATION:

Availability of final circular

This notice provides a summary of the final changes to the ADA Circular and responses to comments. The final Circular itself is not included in this notice; instead, an electronic version may be found on FTA's website, at www.fta.dot.gov, and in the docket, at www.regulations.gov. Paper copies of the final Circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366-4865.

Table of Contents

- I. Overview
- II. Chapter-by-Chapter Analysis
 - A. General Comments
 - B. Chapter 1 – Introduction and Applicability
 - C. Chapter 2 – General Requirements
 - D. Chapter 3 – Transportation Facilities
 - E. Chapter 4 – Vehicle Acquisition and Specifications
 - F. Chapter 5 – Equivalent Facilitation
 - G. Chapter 6 – Fixed Route Service
 - H. Chapter 7 – Demand Responsive Service
 - I. Chapter 8 – Complementary Paratransit Service
 - J. Chapter 9 – ADA Paratransit Eligibility
 - K. Chapter 10 – Passenger Vessels
 - L. Chapter 11 – Other Modes
 - M. Chapter 12 – Oversight, Complaints, and Monitoring

I. Overview

FTA is publishing Circular C 4710.1, regarding the Americans with Disabilities Act (ADA), to provide recipients of FTA financial assistance with information regarding their ADA obligations under the regulations, and to provide additional optional good practices and suggestions to local transit agencies.

The proposed Circular was submitted to the public for notice and comment in three phases. FTA issued a notice of availability of the proposed first phase, entitled “Americans with Disabilities Act: Proposed Circular Chapter, Vehicle Acquisition,” in the **Federal Register** on October 2, 2012 (77 FR 60170). The comment period closed December 3, 2012. FTA issued a notice of availability of the second phase, entitled “Americans with Disabilities Act: Proposed Circular Amendment 1,” in the **Federal Register** on February 19, 2014 (79 FR 9585). The comment period closed April 21, 2014. Amendment 1 introduced the following chapters: Chapter 1 (Introduction and Applicability); Chapter 2 (General Requirements); Chapter 5 (Equivalent Facilitation); and Chapter 8 (Complementary Paratransit Service). FTA issued a notice of availability of the third phase, entitled “Americans with Disabilities Act: Proposed Circular Amendment 2,” in the **Federal Register** on November 12, 2014 (79 FR 67234). The comment period was scheduled to close on January 12, 2015, but at the request of commenters, FTA extended the comment period until February 11, 2015. Amendment 2 introduced the following chapters: Chapter 3 (Transportation Facilities); Chapter 6 (Fixed Route Service); Chapter 7 (Demand Responsive Service); Chapter 9 (ADA Paratransit Eligibility); Chapter 10 (Passenger Vessels); Chapter 11 (Other Modes); and Chapter 12 (Oversight, Complaints, and Monitoring). This amendment also proposed additional text

on monitoring practices as addenda to Chapter 2 (General Requirements) and Chapter 8 (Complementary Paratransit Service).

FTA received comments from 75 unique commenters, with many commenters submitting comments on two or three of the notices. Commenters included individuals, transit agencies, disability rights advocates, State DOTs, trade associations, and vehicle manufacturers. This notice addresses comments received and explains changes we made to the proposed Circular in response to comments.

FTA developed the Circular subsequent to a comprehensive management review of the agency's core guidance to transit grantees on ADA and other civil rights requirements. A primary goal of the review was to assess whether FTA was providing sufficient, proactive assistance to grantees in meeting civil rights requirements, as opposed to reacting to allegations of failure to comply with the requirements. Based on the review, FTA identified the need to develop an ADA circular similar to the circulars long in place for other programs. FTA recognizes there is value to the transit industry and other stakeholders in compiling and organizing information by topic into a plain English, easy-to-use format. A circular does not alter, amend, or otherwise affect the DOT ADA regulations themselves or replace or reduce the need for detailed information in the regulations. Its format, however, will provide a helpful outline of basic requirements with references to the applicable regulatory sections, along with examples of practices used by transit providers to meet the requirements. Simply stated, this circular is a starting point for understanding ADA requirements in the transit environment and can help transit agencies avoid compliance review findings of deficiency.

Several commenters objected to FTA's development of an ADA Circular. They asserted that a "best practices" manual might be a more useful tool for stakeholders. The purpose of a Circular is to provide grantees with direction on program-specific issues, and this final Circular does that. Most of FTA's program circulars provide guidance on statutory provisions in the absence of a robust regulatory scheme. Here, we are providing guidance on a regulatory scheme that can be imposing and, in some cases, extremely technical. FTA has found stakeholder comments on the various phases of the proposed Circular to be extremely helpful in developing a final document that we believe will be useful to transit agencies, advocates, and persons with disabilities alike.

Some commenters asserted the Circular was a "de facto regulation" that would have significant cost impacts and should be subject to evaluation under Executive Orders 12866 and 13563, which direct federal agencies to assess costs and benefits of available regulatory alternatives. FTA is confident the final Circular does not include any new requirements and thus has no cost impacts. Where commenters asserted we had "blended" the regulations with good practices in the proposed Circular, we have clearly distinguished between the regulations and optional good practices or recommendations in the final Circular.

Commenters also asserted that FTA does not have the authority to interpret the DOT ADA regulations, and that any such interpretations must come from DOT. FTA is the agency charged with enforcing the ADA as it applies to public transportation services, and has been interpreting the regulations through complaints, letters of finding, and compliance reviews for many years. We note that we coordinated development of the Circular with DOT, and we also consulted with the U.S. Department of Justice (DOJ) and

the United States Architectural and Transportation Barriers Compliance Board (Access Board).

Some commenters requested that FTA publish all twelve chapters one more time for additional notice and comment. Given that interested stakeholders have had an opportunity to comment on all of the guidance presented in the final Circular, and providing a second opportunity to comment would not be consistent with past practice, we decline to undertake a second round of notice and comment.

FTA received numerous comments outside the scope of the Circular, such as comments objecting to the DOT regulations themselves or requesting amendments to the regulations, comments rendered moot by publication of DOT's "Final Rule on Transportation for Individuals with Disabilities; Reasonable Modification of Policies and Practices" [hereinafter, "final rule on reasonable modification"] (80 FR 13253) (<http://www.gpo.gov/fdsys/pkg/FR-2015-03-13/pdf/2015-05646.pdf>), and comments with specific factual scenarios that are better addressed through requests for technical assistance. This notice does not respond to comments outside the scope of the Circular.

II. Chapter-by-Chapter Analysis

A. General Comments

The Circular is organized topically, as requested by several commenters. Each chapter begins with an introduction, and is divided into sections and subsections. In response to many comments requesting inclusion and clear delineation of the regulations in the text of each section, we revised the organizational structure to include the text of the regulations, followed by a clearly delineated discussion section that provides means of complying with the provisions and optional good practices. Thus, many sections and

subsections begin with a “Requirement” section, which states the regulations relevant for that section, and then a “Discussion” section, which includes explanation of the requirement, relevant DOT or FTA guidance, and suggested optional good practices.

The Circular does not, and is not intended, to exhaustively cover all of the DOT ADA requirements applicable to FTA grantees. Additionally, the Circular does not establish new requirements; it represents current regulations, guidance, and policy positions of DOT and FTA.

Many commenters suggested that throughout the proposed Circular, FTA was imposing requirements not otherwise found in the regulations. For example, several commenters stated that FTA expanded regulatory requirements by mixing the DOT ADA regulations with suggestions and good practices. Commenters in particular were concerned with use of the word “should,” which they asserted creates ambiguity as to whether a statement is mandatory or permissive. In response, we removed “should” from the final Circular (except, for example, where we quoted 49 CFR Part 37 and Appendix language) and clarified which items are mandatory requirements, and which are permissive. In addition to delineating requirements by having separate “Requirement” and “Discussion” sections as discussed above, we indicated requirements with mandatory words such as “must,” “obligates,” or “requires.” Similarly, we indicated a certain action or activity is not a requirement by using terms such as “encourages,” “optional,” “recommends,” or “suggests.”

We added regulatory text and citations to 49 CFR Part 37, Appendices D and E of 49 CFR Part 37, and previously published DOT guidance throughout the final Circular to provide support for requirements. Several commenters requested clarification of items

presented as “good practices.” They expressed concern that these “good practices” might form the basis for a deficiency in a future FTA oversight review, and some asserted these suggested “good practices” would take the place of local planning processes. Good practices, while encouraged, are not requirements, will not lead to findings in compliance reviews, and should not take the place of local planning and decision-making processes. To address these concerns we added this statement in the introduction of each chapter: “FTA recommendations and examples of optional practices are included throughout the Circular and do not represent requirements. FTA recognizes that there are many different ways agencies can implement the regulatory requirements and ensure the delivery of compliant service. FTA encourages transit agencies to engage riders with disabilities when making decisions about local transit service.”

Many commenters requested specific citations to the regulations, letters of finding, existing guidance and case law. As stated above, we added the citations to the regulations in each section and subsection of the final Circular, as well as direct quotes from and hyperlinks to Appendix D and Appendix E to Part 37. In addition, we included several links to letters of finding from FTA’s Office of Civil Rights, as well as DOT guidance documents. Similarly, a commenter asked for a thorough explanation of the role of other federal agencies regarding the ADA. Where relevant and helpful, we included references to other agencies such as the Access Board, the Department of Justice, the Federal Highway Administration and the Federal Railroad Administration. We did not, however, include citations to case law in the final Circular. FTA circulars typically do not include case law citations, and where we included one in chapter 3 of the proposed Circular, commenters objected. We have removed the citation from chapter 3 and instead

discuss the relevant case law in this **Federal Register** notice in the chapter 3 discussion, below.

Commenters made stylistic and word choice suggestions throughout the Circular. In many cases, we adopted them because they improve the readability, accuracy, or clarity of the document. Commenters also pointed out typographical errors, grammatical mistakes, bad web links, lack of citations, and inconsistent numbering and cross references throughout the Circular. We made corrections based on those comments, and we made additional stylistic, grammatical, and minor technical changes to improve readability of the document.

In addition, we made changes to enhance clarity for the reader. We reduced repetition in the text and honed the language to be clearer and more direct. We added more headings and subheadings throughout to make it easier for the reader to find and reference sections. We reorganized chapters and moved sections around for more logical flow and ease of read. We deleted text that either was not relevant or provided little value to the reader. We also added internal cross-reference citations to assist the reader in following topical discussions throughout the document.

Several commenters suggested the circular should provide specificity when discussing the types of public transportation systems and services, particularly in regard to ADA complementary paratransit and general public demand responsive service. Throughout the Circular, we refrain from using the term “paratransit” in isolation unless the type of paratransit – ADA complementary or general public demand response – to which we are referring is clear. Another commenter asked for definitions for “fixed route” and “demand responsive service,” and we have provided definitions of those terms

and other terms where relevant; for example, at the start of Chapter 7 we provide the section 37.3 definitions for fixed route and demand responsive service and include a brief discussion.

Commenters noted that portions of the text included the term “common wheelchair” although the term was removed from the DOT ADA regulations in the 2011 Amendments. The dimensions of a common wheelchair (30 inches by 48 inches, weighing 600 pounds when occupied) remain the minimum dimensions that must be accommodated on a transit vehicle, pursuant to 49 CFR Part 38. In the final Circular, we use the term only when referring to securement areas (vehicle acquisition bus and van checklist in chapter 4), and when quoting 49 CFR 37.123 in chapter 9. In addition, we have added some explanatory text to chapter 2.

B. Chapter 1 – Introduction and Applicability

Chapter 1 introduces the Circular, provides a brief summary of the regulations applicable to public transit providers, discusses the applicability of the DOT ADA regulations, includes a list of transportation services not addressed in the Circular, and outlines the organization of the document.

To clarify the types of entities addressed, we added a footnote with the DOT ADA regulatory definition of public entity. Consistent with organizing the final Circular by topic, we removed the discussions included in the proposed Circular on university transportation systems, vanpools, airport transportation systems, and supplemental services for other transportation modes from Chapter 1. We moved the discussions on university transportation systems and supplemental services for other transportation

modes to Chapter 6 and vanpools to Chapter 7. We added airport transportation systems to the list of transportation services not covered in the Circular.

Several commenters expressed concern about which entities are covered or not covered by the ADA regulations and which are addressed in the Circular. In response, we made edits to Chapter 1 to address the coverage of both the Circular specifically and the DOT ADA regulations generally.

On the topic of services under contract or other arrangements, one commenter requested guidance on whether the “stand-in-the-shoes” requirements referenced in the DOT ADA regulations apply to a situation in which a public entity contracts with another public entity. We added Appendix D language to clarify that a public entity may contract out its service but not its ADA responsibilities. Another commenter suggested adding an example in the section, “When the Stand-in-the-Shoes Requirements Do Not Apply” to clarify when private entities do not “stand in the shoes” of the public entity. We added language to clarify this point. Moreover, one commenter expressed concern about the stand-in-the-shoes requirement as it relates to private entities receiving section 5310 funding (Enhanced Mobility for Seniors and Individuals with Disabilities Formula Program). In the proposed Circular we distinguished between “traditional section 5310 projects” and other projects when applying the “stand-in-the-shoes” provisions. We revised this section to instead draw a distinction between closed-door and open-door service. Essentially, subrecipients that receive section 5310 funding and provide closed-door service to their own clientele do not stand in the shoes of the state administering agencies or designated recipients. Subrecipients that provide open door service, defined

as service that is open to the general public or to a segment of the general public, do stand in the shoes of state agencies or designated recipients.

One commenter expressed concern about the following statement: “FTA grantees are also subject to the Department of Justice (DOJ) ADA regulations. Public entities are subject to 28 CFR Part 35, which addresses state and local government programs.” To be more precise, we removed the statement and directly cited 49 CFR 37.21(c).

C. Chapter 2 – General Requirements

Chapter 2 discusses the regulations related to nondiscrimination and other applicable crosscutting requirements, including prohibitions against various discriminatory policies and practices, equipment requirements for accessible services, assistance by transit agency personnel, service animals, oxygen supplies, accessible information, personnel training, reasonable modification of policy, and written policies and procedures. The content of Chapter 2 of the final Circular is substantially similar to Chapter 2 of the proposed Circular, except we have added Reasonable Modification of Policy, and we removed the discussion on monitoring. In addition to edits made in response to comments, we have made stylistic and technical changes, and reorganized the chapter to be consistent with the format of the rest of the Circular.

We did not include reasonable modification in the proposed Circular, but several commenters preemptively objected to the concept of reasonable modification being included in the Circular without the support of a final rule. The DOT’s final rule on reasonable modification was published on March 13, 2015 (80 FR 13253), and became effective on July 13, 2015. Therefore, we added the “Reasonable Modification of Policy” section to this chapter, provided background on the final rule, and discussed requirements

of and exceptions to the rule with language from the preamble and the final rule itself. In particular, we noted the rule does not require an agency to establish a separate process for handling reasonable modification requests; an agency can use some or all of its procedures already in place. The “discussion” sections following the regulatory text do not attempt to interpret the regulation beyond what is published in the final rule, the preamble, and Appendix E to 49 CFR Part 37.

We received a number of comments on nondiscrimination and prohibited policies and practices. In the examples of policies and practices FTA considers discriminatory, one commenter suggested including related state laws. Due to the wide variation of nondiscrimination laws across states and local jurisdictions, we decided not to include state laws in the examples. While one commenter supported the examples listed, another commenter, citing the example of boarding passengers with disabilities separately, noted there are situations where requiring persons with disabilities to board separately is valid, such as allowing a rider with a mobility device to board first or last to ensure space in the securement area. We determined that including the example about separate boarding could create confusion, so we removed it from the bulleted list.

Regarding the prohibition against imposition of special charges, one commenter suggested including an additional example regarding cancelled and no-show trips. We added this example to the bulleted list of examples of prohibited charges. Another commenter asserted providers must not charge extra for paratransit service. Charging twice the fixed route fare is an allowable charge for complementary paratransit service and is not a special charge. As discussed in chapter 8, charging for premium

complementary paratransit service (e.g., same day trips, “will call” service, etc.) is permitted.

On service denials due to rider conduct, several commenters suggested making clear that verbal assault of a driver or other passengers can be grounds for refusing service. We included this suggestion and added an example. A few commenters wanted clarification on the statement that a transit agency cannot deny service to persons with disabilities based on what the transit agency perceives to be safe or unsafe. Because a transit agency is permitted to deny service to someone who is a direct threat to the health or safety of others, we added the qualification that an agency cannot deny service to persons with disabilities based on what it perceives to be safe or unsafe “for that individual.” Another commenter was concerned we had expanded the meaning of “direct threat” without providing clarity as to how to make a direct threat determination. In response, we note the final rule on reasonable modification amended sections 37.3 and 37.5 to include direct threat as a cause for service denial. We incorporated relevant language from Appendix D about an agency making an individualized assessment based on reasonable judgment that accounts for several factors. We also added clarification that direct threat to others may overlap with seriously disruptive behavior.

One commenter expressed support for the discussion on the right of individuals to contest service denials. Another commenter suggested inclusion of additional language related to appeal rights. We revised the language to reflect that riders must have the opportunity to present information to have service reinstated.

We received multiple comments on equipment requirements for accessible service. One commenter stated that FTA should encourage transportation providers to

perform routine maintenance and updates to features over which they have control. We note both the proposed and final Circular include language that transit agencies must inspect all accessibility features often enough to ensure they are operational and to undertake repairs or other necessary actions when they are not.

In response to a comment requesting clarification on snow removal and asking for a specific timeframe in which snow must be removed to allow for accessible routes to transit service, we added a subsection, “Ensuring Accessibility Features Are Free from Obstructions.” We stated in the subsection that agencies have an obligation to keep accessible features clear of obstructions if they have direct control over the area. We included an illustrative example of how a particular transit agency clears snow, but we do not prescribe a specific timeframe because there are context-specific factors to account for, as well as local laws governing timeframes for snow removal. Another commenter asked whether a transit agency has an obligation to tow illegally parked vehicles occupying accessible parking spaces. We stated in this subsection that agencies have an obligation to enforce parking bans and to keep accessible features clear where they have direct control over the area, which may include removing illegally parked vehicles.

We received numerous comments on lifts, ramps, and securement use. In the final Circular, throughout the section, we added language from Appendix D and previously published DOT Disability Law Guidance to clarify the discussion.

In regard to wheelchairs, one commenter indicated it required footrests for personal safety of the passenger while maneuvering. We made clear in the final Circular a transit agency cannot require a wheelchair to be equipped with specific features, and noted that a policy requiring wheelchairs to be so equipped is prohibited by the general

nondiscrimination provision of 49 CFR 37.5. Another commenter requested an express statement that blocking an aisle is a legitimate safety concern for which a wheelchair can be excluded. In response, we included language from the preamble to DOT's September 19, 2011, "Final Rule on Transportation for Individuals with Disabilities at Intercity, Commuter, and High Speed Passenger Railroad Station Platforms; Miscellaneous Amendments" (76 FR 57924) to address this concern, and we added Appendix D text. In regards to securement areas, a commenter suggested adding a qualification that wheelchairs need to fit in the securement area, and we included the suggested language in the final Circular. One commenter also supported the discussion on maintaining an inventory of lifts, ramps, and securement areas. On boarding and alighting direction, one commenter asked us to clarify that the requirements applied to ramps as well as lifts. In response, we added a reference including ramps. Another commenter suggested we include language that an agency advertise how its vehicles meet or exceed the Part 38 design standards as to wheelchair accessibility. In response, we included examples of where agencies may provide such up-to-date information: on schedules, rider guides, agency websites, and through outreach.

A few commenters requested further guidance on other mobility devices. We included language from DOT Disability Law Guidance that a provider is not required to allow onto a vehicle a device that is too big or poses a direct threat to the safety of others, and provided a link to the guidance in a footnote. Another commenter requested guidance related to a bicycle as a mobility device. In response, we added bicycles to the list of items not primarily designed for use by individuals with mobility impairments, along with shopping carts and skateboards. A few commenters sought clarification as to

whether users of non-wheelchair mobility devices, such as rollators, can be required to transfer to a vehicle seat. In response, we added language stating an agency can require people using such devices to transfer to a vehicle seat.

One commenter pointed out an inconsistency of using both “lap and/or shoulder belts” and “lap and shoulder belts” and suggested using a consistent term. In response to this and other comments on the subject, we used the more accurate terms of “seat belts and shoulder harnesses.” Further, we provided a link to DOT Disability Law Guidance for more information on seat belts.

On allowing standees on lifts, one commenter suggested explicitly mentioning passengers with non-visible disabilities as eligible users. In response, we added language specifying that the standees on lifts requirement applies to riders who may not have a visible or apparent disability. In addition, we provided Appendix D language about allowing individuals who have difficulty using steps to use a lift on request.

Regarding assistance by transit agency personnel, one commenter suggested clarification of assistance with securement systems, ramps, and lifts. We provided examples of types of assistance, and clarified the interaction between direct threat and required assistance for securement systems, ramps, and lifts. Of note, we explained the regulations do not set a minimum or maximum weight for an occupied wheelchair that drivers are obligated to help propel, and that transit agencies will need to assess whether a level of assistance constitutes a direct threat to a driver on a case-by-case basis.

We received several comments related to service animals. Some commenters requested that DOJ and DOT reconcile their rules on service animals; the Circular explains the current requirements, and we have forwarded those comments to DOT for

their consideration. One commenter appreciated the specification that emotional support is not enough to meet the regulatory definition for service animal because animals that provide emotional support passively as “emotional support animals” are not trained to perform a certain task. Another commenter asked whether service animals include those to detect onset of illnesses like seizures. In response, we included examples of service animals that serve individuals with hidden disabilities such as seizures or depression. In response to comments requesting clarification on how to determine if an animal is a service animal, we added to the final Circular the two questions transit personnel may ask a passenger with a service animal: 1) Is the animal a service animal required because of a disability? and, 2) What work or task has the animal been trained to perform?

On the bulleted list of guidance on service animals, one commenter supported the point about transit agencies not imposing limits on the number of service animals accompanying a rider, as well as the examples of when a service animal is under the owner’s control and when it is not. A few commenters suggested including more examples to the bulleted list of guidance applicable to service animals: a driver is not required to take control of a service animal, and clarification regarding passengers with animal allergies. In response, we edited the list to state a rider’s request regarding the driver taking charge of a service animal may be denied and, because the regulations expressly state that service animals must be allowed to accompany individuals on vehicles and in facilities, we added text stating that other passengers’ allergies to animals would not be grounds for denying service to a person with a service animal. Further, we added a footnote referencing DOJ guidance on service animals with the note that some of the guidance may be inapplicable to a transit environment.

One commenter asked for clarification regarding the ADA regulation and DOT safety guidance related to oxygen. We revised the discussion to make clear that commonly used portable oxygen concentrators do not require the same level of special handling as compressed oxygen cylinders. This revision includes a citation to the regulation and an explanation of the referenced FTA complaint response.

We received multiple comments on the provision of information in accessible formats. One commenter requested guidance on when and how often a transit agency should provide information on system limitations, such as elevator/escalator outages and service delays. We do not prescribe a single standard because of the vast differences among transit agencies, but we cited the regulation and explained that a transit agency is obligated to ensure access to information, including information related to temporary service changes/outages, for individuals with disabilities. One commenter supported the nuance that information needs to be in usable format, even if it is not a preferred format. On the topic of website accessibility, a few commenters requested clarification on requirements and examples of good practices. Another commenter noted website accessibility is a requirement, not a good practice. In response, we added an “Accessible Websites” subsection, in which we specified that section 37.167(f) requires information concerning transportation services to be available and accessible. We also referred to DOJ and Access Board guidance. Another commenter stated visual displays must be made available for people who have hearing disabilities. In response, we added the “Alternatives to Audio Communications” subsection, which addresses visual information, and referenced DOT Standard 810.7. One commenter stated the voice relay services must be maintained despite advances in smartphone and other communications

technology. In response, we included language on the importance of continuing to advertise relay service numbers for riders who cannot access the latest technologies.

We received a few comments on personnel training. One commenter disagreed with the statement that, “rider comments and complaints can be the ultimate tests of proficiency; comments that reveal issues with the provision of service are good indicators employees are not trained proficiently,” because the rider comments may not contain violations of the regulations. In response, we replaced “are” with “may serve as” in the sentence at issue. Another commenter suggested including more language on training, specifically for contractors and third-party operators. Accordingly, we included language directly from Appendix D.

We received numerous comments related to monitoring as proposed in Chapter 2, which was comprised primarily of bulleted lists on data collection, reviewing data, and direct observation. Several commenters disagreed with its inclusion and asked for the regulatory basis for these requirements. Multiple commenters disagreed with the discussion, asserting it would be time consuming and costly. Several commenters called for its deletion. Conversely, there were commenters who supported the inclusion of this section. In response to commenters’ concerns—and in recognition that the specifics of a monitoring approach are developed locally—we removed the proposed monitoring section from this chapter.

D. Chapter 3 – Transportation Facilities

Chapter 3 discusses the regulations related to transportation facilities, with emphasis on the requirements for new construction and alterations. It also addresses common issues with applying the requirements.

On the topic of coordinating with other entities, several commenters objected to this section, asserting that FTA was adding a requirement that did not exist in the regulation, while one commenter believed the discussion was critically important to accessibility for individuals who use public transportation and required more than a single paragraph on the topic. Some commenters noted that coordination with public agencies and other stakeholders, whether formally or informally, is a routine part of their local decision-making process. The commenters who objected believed this discussion created a new, open-ended responsibility that was not supported by the regulations; one particular concern was that this language appeared to create an active monitoring requirement for every facility element in their service area. In response, we added a subsection on “Coordination with Other Entities,” which states FTA encourages a transit agency to engage with other entities that control facility elements used to access the transportation facility when undertaking a construction or alteration project involving its own facilities. This subsection also explains the goal of coordination efforts and uses the terms “engage” and “encourage” to distinguish the efforts from a highly formalized coordination process. Thus, there is no open-ended responsibility with unlimited obligations on the part of transit agencies.

Several commenters asked for specifics as to what coordination efforts should look like. Because these are context-specific engagement efforts, we did not provide extensive examples of what engagement looks like. We did, however, include an example on advising a municipality that its sidewalks adjacent to a transit agency’s facilities were inaccessible. Another commenter suggested the agencies document coordination efforts to demonstrate a good faith effort to coordinate, in the event the other entity is

uncooperative or nonresponsive, and we adopted this suggestion. In a related comment, another commenter was concerned with the recourse available for unsuccessful engagement efforts. We added language that a transit agency can contact the FTA Office of Civil Rights to help facilitate coordination with the Federal Railroad Administration (FRA), the Federal Highway Administration (FHWA), or other counterparts.

Next, we received numerous comments on the section, “Common Issues in Applying the DOT Standards.” Some commenters supported this section because it provided a good level of detail and explained important issues. One commenter suggested discussing escalators and elevators, but we declined to add these topics because in the context of applying the DOT Standards, they are not common issues.

We received several comments on passenger loading zones. Some of the commenters asked for added details or further explanation of the discussion and figures. We did not add all of the suggestions because we wanted the figures to be easily readable and focused on common issues. But we did revise figures based on suggestions, such as including a curb ramp as part of an accessible route to the facility entrance in Figure 3-2, which depicts the required dimensions for passenger loading zones and access aisles. On the topic of curb ramps, a few commenters asked for clarification on level landing, and in response we added text providing the slope requirement for a level landing to Figure 3-3, which depicts curb ramp requirements and common deficiencies. One commenter suggested additional guidance on slopes and vertical lips rather than only pointing them out in Figure 3-3. We added an example regarding slopes in curb ramps that were too steep for wheelchairs to maneuver them, and cited to the relevant DOT Standards and

FHWA guidance. In Figure 3-3, a commenter pointed out the detectable warnings incorrectly extend through the curb line, so we corrected the figure.

Regarding station platforms, a few commenters stated the guidance on detectable warning orientation was unclear. We revised the statement on orientation and alignment to state they are commonly aligned at 90 degrees, but 45 degrees is acceptable.

We received one comment regarding new construction. The commenter suggested including the manner in which conditions of structural impracticability may be petitioned to FTA. In response, we added the suggestion that transit agencies should contact the FTA Office of Civil Rights.

We received numerous comments on the “Alteration of Transportation Facilities” section. Several commenters believed this section expanded the regulations concerning the various concepts of alterations, technical infeasibility, usability, and disproportionate cost. In response, we revised the section by incorporating suggestions and clarifying the requirements and discussion. Although we proposed to introduce the topic by citing the regulatory language and providing definitions and a case law example, commenters expressed concern with this approach. In response, we revised the section’s introductory paragraph to explain the two types of alterations (as described in 49 CFR 37.43(a)(1) and (a)(2), discussed below), as well as to note the difference between the two types, and the requirements for alterations.

Commenters’ concerns generally centered on FTA’s interpretation of 49 CFR 37.43(a)(1) and (a)(2). Importantly, there is a distinction between these two provisions. Section 37.43(a)(1) applies to alterations of existing facilities that could affect the usability of the facility – what we have labeled in the final Circular, “General

Alterations.” When making general alterations, the entity “shall make the alterations ... in such a manner, to the maximum extent feasible, that the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alteration.” In section 37.43(a)(1), cost is not a factor.

On the other hand, section 37.43(a)(2) provides that when a public entity “undertakes an alteration that affects or could affect the usability of or access to an area of a facility containing a primary function, the entity shall make the alteration in such a manner that, to the maximum extent feasible, the path of travel to the altered area ... [is] readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of the alteration. *Provided*, that alterations to the path of travel ... are not required to be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if the cost and scope of doing so would be disproportionate.” This provision is discussed in the subsection, “Areas of Primary Function and Path of Travel.”

Some commenters asserted this is a new interpretation, the interpretation adds regulatory requirements related to alterations, is inconsistent with the statute, and amounts to an unfunded mandate. Importantly, while the issue of alterations to the path of travel itself does not arise frequently, this is not a new interpretation by FTA. For example, in 2011, subsequent to a compliance review, we found a transit agency deficient when it made alterations to a pedestrian overpass and two sets of stairs but did not analyze the feasibility of making the station fully accessible, and did not make the station fully accessible. Further, the plain language of the ADA and DOT’s implementing

regulations, federal appellate case law, and the Department of Justice's (DOJ) interpretation of the ADA's legislative history each dictate that costs and cost-disproportionality related to alterations may be considered by a public entity only under circumstances where a public entity is undertaking an alteration to a primary function area of the facility (e.g., train or bus platforms, passenger waiting areas, etc.) and therefore must also make alterations to the path of travel to make it accessible to the maximum extent feasible.¹

Thus, where an element of a path of travel (such as a sidewalk, pedestrian ramp, passageway between platforms, staircase, escalator, etc.) in an existing facility is itself the subject of alteration—that is, not in connection with an alteration to a primary function area—and is therefore subject to 49 CFR 37.43(a)(1), the public entity is required to conduct an analysis of the technical feasibility of making the altered portion (i.e., the element of the path of travel) readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, without regard to cost or cost-disproportionality, and making the facility accessible to the maximum extent feasible. We have included this discussion in the subsection, “When the Altered Area is the Path of Travel.”

Some commenters expressed concern that the language in this subsection was drafted broadly, and that an alteration to a sidewalk or parking lot could trigger the requirement to conduct an analysis regarding the feasibility of installing an elevator. We

¹ See 42 U.S.C. § 12147(a); 49 CFR § 37.43(a), (c); DOJ Final Rule Implementing Title III of the ADA, 56 Fed. Reg. 35544, 35581 (July 26, 1991) (Title II of the ADA regarding public services and public transportation is identical in pertinent language to Title III of the ADA) (“Costs are to be considered only when an alteration to an area containing a primary function triggers an additional requirement to make the path of travel to the altered area accessible”); see also *Disabled in Action of Pa. v. Southeast Pa. Transp. Auth.*, 635 F.3d 87, 95 (3d Cir. 2011); *Roberts v. Royal Atlantic Corp.*, 542 F.3d 363, 371–72 (2d Cir. 2008).

have amended the text to clarify that it is the element of the path of travel undergoing the alteration that must be made accessible. Only alterations to stairs or escalators would require an analysis of whether it is technically feasible to install a ramp, elevator, or other level-change method or device. A commenter expressed concern about multiple station entrances and an apparent requirement for each station entrance to be accessible.

Specifically, where one entrance has an accessible path of travel, the commenter was concerned that alteration to escalators or stairs at other station entrances would require those station entrances be made accessible. We have added language citing Exception 1 to DOT Standard 206.4, providing that where an alteration is made to an entrance, and the building or facility has another accessible entrance that is on an accessible route, the altered entrance does not have to be accessible.

Several commenters asserted the language in the proposed Circular would require agencies to add an elevator any time even minor repairs are made to stairs or escalators. We included the definition of “alteration” in both the proposed and final Circular. The definition of alteration specifically excludes normal maintenance, and we would consider minor repairs to be normal maintenance. We have provided examples of what would be considered an alteration to staircases in the final Circular.

Finally, some commenters asserted that requiring an accessible vertical path of travel whenever alterations are made to staircases or escalators is a costly endeavor, and that some transit agencies may simply not make those alterations, thus allowing path of travel elements to fall out of a state of good repair. Further, commenters asserted that prioritizing accessibility over state of good repair would necessarily divert resources from state of good repair needs to elevator installations. FTA notes that accessibility and state

of good repair are two critical responsibilities of transit agencies. In an arena of insufficient capital resources, priorities and choices must always be made. Accessibility is a civil right, and civil rights must be assured in all operating and capital decisions. State of good repair is also essential to the effective provision of service, particularly when the safety of all passengers – with and without disabilities – is dependent on the condition of infrastructure. It is the role of the transit agency management and governing board to balance both accessibility and state of good repair to ensure the civil rights and safety needs of all passengers and employees are met.

On the subsection of “Maximum Extent Feasible,” a few commenters asserted we had redefined “technically infeasible” as physically impossible. That was not our intention; rather, we cited the definition of technical infeasibility found in section 106.5 of the DOT Standards. Given that we cited the definition without explanatory text, one commenter requested guidance on determinations for technical infeasibility or disproportionate cost. In response, we provided the necessary elements an entity must document to demonstrate technical infeasibility, which include a detailed project scope, coordination efforts where necessary and appropriate, a description of facility-specific conditions, and a step-by-step discussion on how the entity determined the facility could not be made accessible. Entities have provided this information to FTA in the past to demonstrate technical infeasibility.

Several commenters were concerned that FTA appeared to expand the definition of “usability” by referencing a court case in the text of the proposed Circular. We have removed the case reference, and provided guidance regarding the concept of usability consistent with the legislative history of the ADA and federal case law. Importantly, the

legislative history of the ADA states that “[u]sability should be broadly defined to include renovations which affect the use of facility, and not simply changes which relate directly to access.”² Further, a facility or part of a facility does not have to be “unusable” for an alteration to affect usability; resurfacing a platform or a stairway are alterations that make the platform or stairway safer and easier to use.³

We have amended the subsection, “Disproportionate Costs” in response to comments. Many of the comments reflected a misunderstanding of the difference between 49 CFR 37.43(a)(1) and (a)(2), as discussed above, suggesting that FTA was adding a requirement for elevators when a stairway or escalator was repaired, as opposed to altered, and generally disagreeing that elevators are required irrespective of costs when a stairway or escalator is altered. In response, we cited the regulatory authority, reorganized the subsection, and retained the example of when the cost of adding an elevator would be deemed disproportionate and, therefore, not required.

For the subsection, “Accessibility Improvements When Costs Are Disproportionate,” we refined the language and added more specific citations to the regulations and DOT Standards. One commenter expressed concern that the proposed language eliminated an agency’s ability to limit the scope of an alteration along the path of travel to discrete elements that could be evaluated independently. In response, we included the text of section 37.43(g), which prohibits public entities from circumventing the requirements for path of travel alterations by making a series of small alterations to the area served by a single path of travel. We also removed irrelevant regulatory citations, specifically section 37.43(h)(2) and (3) because they were unnecessary to the discussion.

² H. Rep. No. 485, 101st Cong., 2d Sess., Pt. 3, at 64 (1990), reprinted in 1990 U.S.C.C.A.N. 445, 487.

³ See, e.g., *Kinney v. Yerusalem*, 9 F.3d 1067 (3d Cir. 1993).

On platform and vehicle coordination, several commenters requested clarification and further guidance for specific situations. In response to comments, we determined platform and vehicle coordination would be better served in a discussion separate from the other common issues with station platforms, so we reorganized the chapter and provided a new section entitled, “Platform-Vehicle Coordination.” In this section, we described level boarding in plain language, listed various ways to meet the Part 38 requirements, and provided photos of level boarding, mini-high platforms, bridge plates, and platform-based lifts.

We received a number of comments related to rapid rail and light rail, specifically as to gaps and level boarding. In response, we added sections for rapid rail platforms and light rail platforms. The “Rapid Rail Platforms” section cites the gaps allowed by the regulation for new and retrofitted vehicles and new and key stations. The “Light Rail Platforms” section includes the gap requirements and provides a discussion related to platform heights and level boarding requirements in light rail systems.

We have slightly reorganized the section, “Intercity, Commuter, and High-Speed Rail Platforms,” and provided further detail and clarification by adding regulatory citations and a link to DOT guidance. In addition, we added a subsection on “Platform Width of New or Altered Platforms,” which provides suggestions from DOT guidance.

One commenter applauded the inclusion of Attachment 3-1, “Rail Station Checklist for New Construction and Alterations.” A few commenters expressed concern that the checklist could be misconstrued as requirements for the transportation facilities rather than a guidance tool to determine needs. Another commenter was concerned with the blurring of requirements and best practices in regards to the checklist.

As we did throughout the final Circular, we connected each requirement to its relevant authority with citations to the regulation. Although there are requirements and standards contained in the checklist, use of the checklist itself is not a requirement. Accordingly, we amended the checklist title and stated that the checklist is “optional.” Other commenters stated the checklist included a number of erroneous citations and omitted several sections that are part of the DOT Standards. In response, we reviewed the citations to ensure accuracy and noted the checklist does not cover all of the DOT Standards. Another commenter asserted the accessible routes checklist was unusable without distances to compare with inaccessible routes. We did not provide distances because of local discretion and the variety of different contexts and possible situations. On signage at defined entrances, one commenter asked for clarification as to maps, and we specified signage must comply with DOT Standard 703.5. Another commenter pointed out that we used “area of refuge” and “area of rescue assistance” interchangeably, so we revised the text for consistency. Further, the commenter asked for guidance on what signs at inaccessible exits should look like and where they need to be placed. Because of the great variety of possibilities, we do not provide more specific guidance other than citing the International Building Code, which the DOT Standards follow as to accessible means of egress.

One commenter noted the proposed Circular did not include guidance to transit facility operators regarding facility illumination levels or illumination quality, and requested the final Circular include this information. Given the Access Board has not issued specific ambient lighting standards for compliance under the ADA, we decline to include guidance on this topic in the final Circular.

E. Chapter 4 – Vehicle Acquisition and Specifications

Chapter 4 discusses accessibility requirements and considerations for acquiring buses, vans, and rail cars. We covered new, used, and remanufactured vehicles for various types of service, and then we provided considerations for each type. This chapter was initially titled, “Vehicle Acquisition,” but we revised the title to more accurately describe what is included in the chapter.

We amended the organization and content of this chapter to align this chapter with the format of the subsequently published chapters and to respond to comments. For example, one commenter suggested the section on demand responsive systems follow the section on fixed route as it does in the regulations. In response, we changed the order of the sections. In the introduction to the chapter, we added a footnote that the Part 38 vehicle requirements closely follow the Access Board Guidelines set forth in 36 CFR 1192.

One commenter suggested removing the word “covers” from the regulation subparts listed as redundant since they are requirements. We agreed and removed the word “covers” from the list of subparts, added text clarifying Part 38 contains technical design requirements, and clarified this chapter broadly covers crucial, often-overlooked accessibility elements. We also clarified that bus rapid transit (BRT) is covered under buses, and streetcars are covered under light rail operating on non-exclusive rights of way.

One commenter suggested replacing usage of the term “acquire” with “purchase or lease” wherever applicable because using “acquire” can lead to the impression the requirements in the chapter only apply to the purchasing rather than leasing of vehicles.

We retained use of “acquire” because its plain language meaning includes both purchasing and leasing, as evidenced by Part 37. Another commenter suggested explaining the relationship of Part 38 to the Access Board’s regulations at 36 CFR Part 1192. We added a footnote in the introductory paragraph of the chapter explaining that the vehicle requirements closely follow the Access Board guidelines. Another commenter suggested breaking Table 4.1 into two tables, rail and non-rail, for legibility. We retained one table because the “vehicle” column specifies “non-rail” or “rail car” and it is clearer as one table.

We received several comments on bus and van acquisition. A commenter objected to the inclusion of demand responsive service and equivalent service in this chapter. In response, we moved the discussion of demand responsive service to Chapter 7. We did retain a brief discussion of demand responsive bus and van acquisition in this chapter. We did so to explain that inaccessible used vehicles may be acquired, so long as the equivalent service standards in section 37.77 are met. The commenter also objected to usage of the term “designated public transportation” in the chapter, and we removed the term because it was unnecessary, but we added it to Chapter 7 when defining “demand responsive” and “fixed route.”

We received several comments on the considerations for acquiring accessible buses and vans. On the topic of lifts, one commenter recommended separating from the discussion of design load weight the mention of safety factor, which is based on the ultimate strength of the material, because it was awkward. In response, we edited the discussion on lifts so the minimum design load and minimum safety factor language is easier to understand.

On the topic of securement systems, several commenters objected to conducting tests or the use of “independent laboratory test results” for securement-system design specifications because they are rarely available, difficult for a transit agency to pursue, and not required by regulation. In response, we changed the language to an FTA recommendation that design specifications be in “compliance with appropriate industry standards.” We also added the recommendation to consult with other agencies that use the same securement system under consideration. Further, we added language on the purpose of securement systems, including that the securement system is not intended to function as an automotive safety device. Another commenter pointed out we included a reference to the “versatility” of a securement system for the “Mobility Aids” bullet point, which does not appear in the regulation. In response, we removed the reference to versatility. Under the bullet point for “Orientation,” a commenter suggested replacing “backward” with “rearward” because it is more technically accurate and appropriate. We adopted this suggestion. Under the bullet point for “Seat belt and shoulder harness,” a commenter suggested changes to the bullet point. We adopted these changes and revised “seat belt” to “lap belt” to be more descriptive. Another commenter questioned our securement system example of short straps and “S” hooks and suggested using the example of a “strap-type tie-down” system. We adopted this suggestion in an effort to avoid confusion from the proposed language. The commenter also suggested replacing the reference to “connecting loops” with “tether straps,” a more recognizable term—we made the change based on this comment.

We received several comments on the various rail car sections (rapid rail, light rail, and commuter rail). One commenter noted the omission of restroom accessibility

requirements. In discussing the standards for accessible vehicles, we chose to highlight common issue areas, which includes doorway-platform gaps, boarding devices, priority seating signs, and between-car barriers. Several commenters asserted that level boarding is not always practical or feasible. Based on these comments, we determined boarding devices are an area of particular interest and included a subsection on them under considerations for light rail and commuter rail vehicles. We explained that where level boarding is not required or where exceptions to level boarding are permitted, various devices can be used to board and alight wheelchair users, including car-borne lifts, ramps, bridge plates, mini-high platforms, and wayside lifts.

On the topic of priority seating signs, one commenter stated the requirement does not account for situations where priority seating and wheelchair seating occupy the same space or where the first forward-facing seat is up a stair at the rear of a bus. In response, we clarified that aisle-facing seats may be designated and signed as priority seats, as long as the first forward-facing seats are also designated and signed as priority seating. One commenter noted it supplements priority seating signage with automated audible and visual messages that ask customers to leave priority seats unoccupied for seniors and persons with disabilities. In line with this comment, we clarified the language an agency places on its signs does not need to match exactly the text in section 38.55(a), but instead capture the general requirement.

On the topic of between-car barriers, one commenter suggested adding text recognizing that track and tunnel geometry may prohibit the use of vehicle-borne between-car barriers. To clarify the discussion on between-car barriers, we revised and explained their purpose and the distinction between between-car barriers and detectable

warnings. The commenter also suggested FTA include more information on design and standards for between-car barriers. We enhanced the discussion related to between-car barriers in light rail systems and added Figure 4-7 to illustrate various between-car barrier options. Notably, FTA issued a Dear Colleague letter on September 15, 2015, related to between-car barriers on light rail systems, available here:

http://www.fta.dot.gov/newsroom/12910_16573.html.

Chapter 4 uses multiple figures for illustration, and we received several comments on those figures. For Figure 4-1, which depicts the accessibility requirements for a bus that is 22 feet or longer, one commenter suggested labeling the clear path to or from securement areas. We revised the figure and added label “E” to denote the clear path to and from securement areas. For Figure 4-2, which depicts the exterior components of an accessible bus, a few commenters pointed out that the international symbol of accessibility, while helpful, is not required on buses as it is on rail cars. In response, we replaced the photograph with a diagram that does not include the international symbol of accessibility. Another commenter suggested adding an arrow pointing out the transition from ground to ramp. The diagram replacing the photograph indicates the transition from ground to ramp without the need for an arrow. For Figure 4-3, a photograph of a deployed lift, one commenter expressed difficulty in seeing what the arrows pointed to and suggested adding a label for “Transition from ground to platform.” In response, we used a different photograph, and provided a label for that element and made the existing labels more accurate. We also lightened the background elements to draw attention to specific lift elements. For Figure 4-4, which depicts a securement and passenger restraint system, several commenters suggested removing unmarked angles from the figure; we agree the

angles were unnecessary and we removed them. Another commenter suggested the front tie-down in the diagram be shown attaching slightly higher so it is at the frame junction instead of at the footrest support. We edited the figure to incorporate this suggestion.

We received several comments related to ensuring vehicles are compliant. One commenter suggested the reference to “detailed specifications” be changed to “required specifications.” We made this change because the specifications are required. A few commenters suggested more specificity with the requirements for measurements and tolerances because the language was too generalized. We added more specific measurements and tolerances where needed; for example, we specified that securement straps have required minimum load tolerances of 5,000 pounds rather than stating the straps have required minimum load tolerances. Another commenter pointed out the phrase, “Sample Documentation of Test Results” was present without any explanation or accompanying text. We removed the text because its inclusion was in error.

On the topic of obtaining public input, one commenter suggested using an alternative phrase to, “full-size sample.” We revised the language to, “partial, full-scale mockups” to be more specific and avoid confusion. Another commenter suggested that in addition to public input, transit agencies involve their board members and staff. This may be an important process for a transit agency to have, but it is unrelated to the public input section and we did not include it in the final Circular. A couple of commenters disagreed with the ramp example used to illustrate that a transit agency may exceed the minimum requirements. They disagreed because ramps are a complex topic which is under continued discussion and study at the Access Board. In response, we used a simpler

example of exceeding the minimum requirements: a transit agency acquiring buses with three securement locations when the minimum requirement is two securement locations.

We received numerous comments on the checklist for buses and vans. Multiple commenters expressed support for the inclusion of checklists and found this checklist helpful. In line with our efforts to distinguish between requirements and good practices, we renamed the checklist to: “Optional Vehicle Acquisition Checklist of Buses and Vans.” A few commenters asked for a similar checklist for rail cars or other vehicle types, but we declined to include one because the bus and van checklist is designed to be only a sample; transit agencies may create their own checklists for buses, vans, or rail cars to ensure compliance with the regulations. In the section on securement areas, several commenters took issue with the mention of common wheelchairs as being incorrect or inappropriate, given the recent change in the regulation. We added a note clarifying the dimensions and weight of a common wheelchair still represent the minimum requirements for compliance in accordance with 49 CFR Part 38. A few commenters also asked for an explanation of what “average dexterity” means. We declined to provide a standard or definition for this term and expect readers to use a plain language meaning. Another commenter pointed out the regulations require “at least” one or two securement locations and not only one or two, so we corrected the text to reflect this.

F. Chapter 5 – Equivalent Facilitation

Chapter 5 discusses equivalent facilitation, including the requirements for seeking a determination of equivalent facilitation, and provides considerations and suggested practices when submitting requests.

This final Chapter remains largely unchanged from the proposed Chapter except for some reorganization and edits made for clarity and responsiveness to comments. Several commenters expressed support for inclusion of this chapter, and in particular the discussion of requests for and documentation of equivalent facilitation. One commenter asked for an explanation regarding the equivalent facilitation determination process. The commenter believed it was inconsistent to state that a determination pertains only to the specific situation for which the determination is made (and that each entity must submit its own request), yet the FTA Administrator is permitted to make a determination for a class of situations concerning facilities. In response, FTA notes the specific situation for which a determination of equivalent facilitation is made may be a class of situations, and where the Administrator makes such a determination, the determination will explicitly state it applies to a class of situations, in which case other transit agencies would not be required to submit new requests for equivalent facilitation for the same situation. We have added language to clarify this.

Several commenters sought clarification on the type of information or materials that must be submitted to FTA in order to support a request for equivalent facilitation. A few commenters asked to whom these submissions must be sent. We added language specifying that the submissions are to be addressed to the FTA Administrator, and we request a copy be sent to the FTA Office of Civil Rights. A few commenters were concerned about costs of testing, particularly with mockups. We listed a mockup as an example of part of the evidence that may be presented with the submission, but we do not expect requestors to send mockups to FTA. Detailed information such as drawings, data,

photographs, and videos are valuable forms of documentation and we encourage their inclusion in submission materials.

One commenter expressed concern with the “Dos and Don’ts” section of this chapter, asserting we conflated requirements with recommendations, so we added “suggested” to the heading to make clear the included items are suggestions and not requirements.

G. Chapter 6 – Fixed Route Service

Chapter 6 discusses the DOT ADA regulations that apply specifically to fixed route service, including alternative transportation when bus lifts are inoperable, deployment of lifts at bus stops, priority seating and the securement area, adequate vehicle boarding and disembarking time, and stop announcements and route identification.

The final chapter remains substantively similar to the proposed chapter. However, we moved several sections that applied across modes to other chapters to minimize repetition, and also made several changes based on specific comments.

There were a few comments regarding alternative transportation requirements when a fixed route vehicle is unavailable because of an inoperable lift. These commenters noted the proposed Circular stated, “agencies must provide the alternative transportation to waiting riders within 30 minutes” when a bus lift is inoperable, but implied the regulations were more flexible. In response, we substituted language with a direct quote from Appendix D, which provides examples for providing alternative transportation. We also added text explaining that with regard to ramp-equipped buses, FTA finds local policies to require drivers to manually deploy ramps instead of arranging alternative

transportation acceptable because Part 38 does not require ramps to have a mechanical deployment feature. We merged the sections regarding alternative transportation when the driver knows the lift is not working and when lifts do not deploy, because the requirements are the same for both.

One commenter, discussing when a bus may not be available to riders because it is full, noted the description of a “full” bus should also include a bus where securement areas are already occupied by riders whom the driver has asked to move, but are unwilling to do so. In response, we added this point to the description of “full.” Some commenters asked what a transit agency must do if an individual is unable to board a bus because all of the wheelchair positions were full. We added text encouraging agencies to instruct drivers to explain the policy to waiting riders, so the riders do not believe they are being passed by.

One commenter praised the text regarding deployment of lifts and ramps, specifically the suggestion that when a driver cannot deploy a lift or ramp at a specific location, the preferred solution is to move the bus slightly. This suggestion is now mirrored by 49 CFR Part 37, Appendix E, Example 4, and we incorporated the example into the final Circular. Another commenter requested examples for what operators can do when passengers seek to disembark at a stop without accessible pathways. Example 4 also addresses this issue.

There were many comments regarding priority seating. Commenters sought clarification regarding when bus drivers can ask individuals, including persons with disabilities or seniors, to move. We edited the text to make clear when the operator must ask individuals to move. We also explained that while operators must ask individuals to

move, they are not required to enforce the request and force an individual to vacate the seat. However, we highlighted that agencies may adopt a “mandatory-move” policy that requires riders to vacate priority seating and securement areas upon request, and encouraged agencies with these policies to inform all riders and post signage regarding these policies. Some of the priority seating comments noted the proposed chapters did not address situations in which the priority seats were also fold-down seats in the securement area. We edited the text to encourage transit agencies to develop local policies regarding whom drivers may ask to move from priority seats if an individual using a wheelchair needs the securement location.

One commenter sought clarification as to whether operators are required to proactively assist seniors or persons with disabilities or whether the customers need to ask for assistance, citing concern for individuals without visible disabilities. We clarified that while the regulations do not require operators to proactively lead riders with disabilities or seniors to the priority seating area, we encourage local agencies to develop policies for drivers regarding serving riders who need assistance and not just those with apparent disabilities. One commenter provided an example of stroller and luggage policies on their vehicles. Consequently, we added a hyperlink to an example of a local policy governing the use of strollers in the securement space on its fixed route buses.

Several commenters expressed concerns about adequate boarding time. Some of these commenters noted that agencies should institute pre-boarding policies for individuals with disabilities who need to use the ramp or lift, to ensure that wheeled mobility device users were not denied service as a result of overcrowding. We maintained the text stating transit agencies may develop policies to allow riders with wheeled

mobility devices to board first, but we added that transit agencies do not need to, and are not advised to, compel individuals on a vehicle to leave the vehicle to allow individuals with a wheeled mobility device to board. There were also comments related to ensuring individuals with disabilities are safely seated on a bus or rail vehicle before it moves, and conversely, commenters stated the discussion of this issue seems to assume individuals with disabilities require additional time to sit. Another commenter noted an operator may not always know that a rider has a disability. We edited the text to encourage transit agencies to develop wait-time standards or other procedures and instruct personnel to pay attention to riders who may need extra time, including those who use wheelchairs and others who may need extra time boarding or disembarking, rather than allowing time for riders with disabilities to be safely seated before moving the vehicle. We also added a suggestion for rail vehicles, where it is more difficult to have visual contact with riders: instead of having drivers and conductors assess on their own how long it takes for a rider to board, transit agencies can establish local wait-time policies to give riders sufficient time to sit or situate their mobility device before the vehicle moves.

There were a number of comments regarding stop announcements and route identification. Many commenters echoed the general comment that the proposed Circular instituted requirements for stop announcements not included in the regulations, specifically with announcing transfer route numbers and the “ability to transfer” at transit stops. We addressed these comments by making clear what is required and what is suggested and removing the use of the term “should.” Additionally, we removed the sentence suggesting route numbers be announced, and we specified that it is a suggestion, but not a requirement, to announce the first and last stops in which two routes intersect.

Another commenter noted asking an agency employee for a stop announcement is not always possible. We added language encouraging riders to approach an agency employee “when possible” to request a stop announcement when boarding the vehicle. We also clarified that while the DOT ADA regulations have certain requirements for stop announcements, the selection of which locations are the major intersections and major destinations to be announced, or what are sufficient intervals to announce, are deliberately left to the local planning process. A few commenters also noted a transit agency may not know about all private entities that intersect with their routes and, therefore, it may be difficult to announce these entities during stop announcements. In response, we clarified that the requirement to announce transfer points with other fixed routes does not mean an agency must announce the other routes, lines, or transportation services that its stop shares—only that it announce the stop itself (e.g., “State Street” or “Union Station”).

One commenter noted that if an automated stop announcement system does not work, the operator must make the announcement. We added text stating the operator must make stop announcements if the automated announcement system does not work.

Another commenter noted it would be challenging to test speaker volume in the field. In response, we note the suggestion to test speaker volume in the field is one of several suggestions provided, and it is not a requirement. We also added the DOT Standards requirement providing that where public address systems convey audible information on a vehicle to the public, the same or equivalent information must be provided in visual format, often in the form of signage displaying the route and direction of the vehicle.

We clarified that transit agencies must sufficiently monitor drivers and the effectiveness of the announcement equipment to ensure compliance with the regulatory stop announcement requirements. There were also several comments about the sample data collection forms, stating FTA was presenting this as a “best example” when it was only one example, and it could be interpreted as required. The form included in the proposed Circular was a resource and only one example of how to monitor stop announcements. A local agency, at its discretion, may choose to use it. In response to comments, we added text noting FTA recognizes there are many different ways of collecting data and monitoring compliance.

One commenter asked us to clarify a sentence regarding rail station signage visibility requirements. We reworded this sentence to be clearer and to include regulatory text.

H. Chapter 7 – Demand Responsive Service

Chapter 7 discusses characteristics of demand responsive service; the equivalent service standard; and types of demand responsive service, including dial-a-ride, taxi subsidy service, vanpools, and route deviation service; and offers suggestions for monitoring demand responsive service. We have reorganized the chapter and made edits in response to comments.

We received multiple comments on equivalent service. Several commenters expressed concern that the concepts of demand responsive service were being mixed with equivalent service and vehicle acquisition. In response, we reorganized this chapter to better explain the service requirements for demand responsive systems. First, we discussed characteristics of demand responsive systems. Next, we mentioned vehicle

acquisition, which the regulations directly tie to demand responsive service requirements. Then, we discussed equivalent service, followed by coverage of types of demand responsive services. We revised the equivalent service discussion to specify that the equivalent service standard does not apply when a vehicle fleet is fully accessible, and we clarified the applicability of the section 37.5 nondiscrimination requirements to all demand responsive services.

A commenter expressed concern with a statement in the proposed chapter about equivalent service being “the same” implies “the same or better,” asserting it might result in preferential treatment for individuals with disabilities. In response, we emphasized in the final Circular that providing a higher level of service to individuals with disabilities would be a local decision, but equivalent service remains a regulatory requirement. That is, service must be at least “equivalent,” though it may be better. When discussing restrictions or priorities based on trip purpose, a commenter suggested not using the phrase “regardless of ability,” so we reworded the concept.

Following the equivalent service discussion, each type of demand responsive service is discussed with equivalency considerations for the respective service. For taxi subsidy service, we received comments expressing concern about the language on equivalency and monitoring, with one commenter suggesting it would effectively end all taxi subsidy service across the nation and hurt customers with disabilities. We disagree with this characterization. The entity administering a taxi subsidy program has the responsibility to ensure equivalent service, and can do this through a number of different methods as described in the final Circular. We recognize taxi service is generally subject to DOJ’s Title III jurisdiction.

Regarding route deviation service, we received comments requesting further clarification about the service requirements. We included additional discussion on service delivery options and inserted Table 7.1, Service Delivery Options, to highlight the service options in a quick-reference table format. One commenter suggested modifying Figure 7-1, which depicts route deviation service, to show a requested pickup or drop-off location with a dotted line, and we revised the figure to incorporate the suggestion. Several commenters had questions related to the subsection, “Combining Limited Deviation and Demand Responsive Services to Meet Complementary Paratransit Requirements.” In response to comments, we removed the discussion and added other subsections that clarify ways an agency can meet ADA requirements. We emphasized three route deviation-related service options, including comingling complementary paratransit and fixed route service on the same vehicle, and included a link to an FTA letter further explaining service options.

Regarding other types of demand responsive service, we noted for innovative, emerging forms of transportation there may be applicable ADA requirements that may not be immediately clear. We added a suggestion to contact the FTA Office of Civil Rights for guidance on identifying applicable ADA requirements.

We received a few comments on monitoring as it relates to demand responsive systems, and we incorporated these into the suggestions for monitoring service. One commenter objected to what it perceived as additional requirements to monitor and report on subrecipients. We added language explaining that agencies must monitor their service to confirm the service is being delivered consistent with the ADA requirements, and that FTA does not dictate the specifics of an agency’s monitoring efforts. Another commenter

asked if there were options for monitoring equivalency that were allowed or accepted other than the approaches in Table 7.2, “Suggested Approaches for Determining Equivalency for Each Service Requirement.” We note the approaches in Table 7.2 are suggestions and there are other ways to fulfill monitoring obligations. Another commenter suggested adding information about what it means for online service to be accessible. We added a reference to Chapter 2 in the section leading up to the table because Chapter 2 discusses accessible information in greater detail. Because the items in Table 7.2 focus on determining equivalency, in the final Circular we added additional suggestions for monitoring specific service types: comingled dial-a-ride and complementary paratransit services, taxi subsidy services, and demand responsive route deviation services.

Finally, we received a couple of comments on certification. One commenter requested FTA clarify the extent to which a state administering agency has a duty to confirm the statements made by grant subrecipients in connection with the certification process. In response, we added language clarifying that state administering agencies need to have review procedures in place to monitor subrecipients’ compliance with certification requirements. Another commenter noted the section contained confusing cross-references and suggested we reexamine it for accuracy. We addressed this by using Appendix D language and a bulleted list with references to specific FTA program Circulars. The commenter also questioned why Attachment 7-1 was labeled as a sample certification if it was the same as the one found in Appendix C to Part 37. In response, in Attachment 7-1 we removed the word “Sample” from the title and removed the date line to mirror the Appendix C Certification of Equivalent Service.

I. Chapter 8 – Complementary Paratransit Service

Chapter 8 addresses complementary paratransit service delivery, including topics such as service criteria, types of service options, capacity constraints, and subscription and premium service.

This chapter was reformatted and reorganized from the proposed chapter to include new sections with regulatory text, and we made several changes and clarifications in response to comments.

One commenter noted paratransit is not supposed to be a guarantee of “special” or “extra” service. We emphasized that any services beyond the minimum requirements are optional and local matters. We added a reference and link to FTA’s existing bulletin “Premium Charges for Paratransit Services” to highlight further that premium services are not required, and if transit agencies provide premium services, they are permitted to charge an additional fee.

A few commenters questioned why commuter service and intercity rail were not included in the list of entities excluded from complementary paratransit. In the final Circular we added the definitions for commuter rail and bus and intercity rail. These commenters also suggested the Circular include more explanation as to when a route called a “commuter bus” route may be required to provide paratransit service, and they suggested including FTA findings regarding this issue. We added a more thorough explanation, cross-referencing to Chapter 6, explaining why a case-by-case assessment by the transit agency is needed to determine whether a particular route meets the definition of commuter bus. We also provided a link to a complaint decision letter regarding the

elements FTA examined to determine whether the service in question in the complaint was in fact commuter service.

We received a number of comments regarding origin-to-destination service. Most of these comments questioned FTA's requirement for door-to-door service, in at least some cases, which they asserted was related to the then-pending rulemaking on reasonable modification and not required by the DOT regulations. Commenters asserted the proposed Circular was essentially requiring door-to-door service and expanding service beyond the standard curb-to-curb service many transit agencies provide. Commenters also expressed concerns about the safety issues of leaving a vehicle unattended for a long period of time to provide door-to-door service to an individual.

As DOT has explained, the requirement for door-to-door service was not contingent upon the reasonable modification rulemaking, but rather rooted in § 37.129. However, this argument is moot since DOT issued its final rule on reasonable modification subsequent to publication of Amendment 2 of the proposed Circular. The final rule, incorporated into Part 37, includes a definition of origin-to-destination consistent with the long-standing requirement (See 80 FR 13253, Mar. 13, 2015). We edited this section to incorporate the regulatory text, preamble text from the final rule on reasonable modification, and relevant examples from the new Appendix E to Part 37. We incorporated several Appendix E examples verbatim that address origin-to-destination issues, including a driver leaving a vehicle unattended.

A few commenters requested clarification on the responsibilities of the transit agency to provide hand-to-hand attended transfers to riders on paratransit. We explained that if an agency requires riders to transfer between two vehicles to complete the

complementary paratransit trip within that agency's jurisdiction, then the agency is required to have an employee (driver or other individual) wait with any riders who cannot be left unattended. But, we added specific language emphasizing that the requirement for attended transfers does not apply when an agency is dropping off a rider to be picked up by another provider to be taken outside the agency's jurisdiction.

One commenter argued it is not accurate to state that "double feeder" service, a service where complementary paratransit is used to provide feeder service to and from the fixed route on both ends of the trip, is typically not realistic. We revised the text and added Appendix D text for clarification, which states "the transit provider should consider carefully whether such a 'double feeder' system, while permissible, is truly workable in its system."

A few commenters suggested clarifications to the figures regarding paratransit service areas, Figures 8-1 and 8-2, depicting bus and rail service areas, such as clarifying the terms in the figures and making the graphics easier to read and less blurry. We made these changes.

There were a few comments regarding access to restricted properties. One commenter requested clarification on what to do in the case of a gated community. Another commenter questioned what recourse transit agencies and passengers have when a commercial facility limits access to paratransit vehicles. In response to these comments, we added a section entitled, "Access to Private or Restricted Properties" and added an Appendix E example from Part 37 that discusses transit agencies' obligations with respect to service to restricted properties. Another commenter stated passengers should be required to arrange access to locked communities or private property if they want to be

picked up or dropped off in a restricted area. The Appendix E example specifically notes the possibility of the transit agency working with the passenger to get permission of the property owner to permit access for the paratransit vehicle.

There were many comments regarding negotiating trip times with riders, mostly regarding drop-off windows and next day scheduling. Many commenters expressed that paratransit scheduling to drop-off time is not required, while one commenter supported scheduling to drop-off times. We revised the text to explain that a true negotiation considers the rider's time constraints. While some trips have inherent flexibility (e.g., shopping or recreation), other trips have constraints with respect to when they can begin (e.g., not before the end of the individual's workday or not until after an appointment is over). A discussion of the rider's need to arrive on time for an appointment will sometimes be part of the negotiation between the transit agency and the rider during the trip scheduling process. We do not prescribe specific scheduling practices an agency must adopt. Instead, we state simply that if trip reservation procedures and subsequent poor service performance cause riders to arrive late at appointments and riders are discouraged from using the service as a result, this would constitute a prohibited capacity constraint. Commenters expressed a related concern regarding a statement that transit agencies should not drop off riders before a facility opens. We revised the text to state more generally that FTA encourages transit agencies to establish policies to drop off riders no more than 30 minutes before appointment times and no later than the start of appointment times, recognizing that it is the customer's responsibility to know when a facility opens.

Several commenters requested clarification on next-day scheduling as to what “no later than one day ahead” means. One commenter suggested changing the text to “on the day before,” which we did, to make clear that scheduling can be done the day before, and not only 24 hours before. A few commenters asked for clarification as to how late “the day before” goes to, specifically for transit agencies that operate service past midnight. We maintained the text stating transit agencies with service past midnight must allow riders to schedule during normal business hours on the day before the trip, including for a trip that would begin after midnight. And we added language specifying “normal business hours” means “during administrative office hours” and not necessarily during all hours of transit operations.

There was also a comment regarding changing negotiated trip times. The commenter questioned to what extent leaving a voicemail is adequate to notify the passenger of a change in pickup time. We clarified that when voicemail is used for trip reservations, if an agency needs to negotiate the pickup time or window, they must contact the rider and conduct a negotiation. Any renegotiation situation is treated similarly, such that if the transit agency calls the rider, and the rider cannot be reached, the transit agency must provide the trip at the time previously negotiated. We also expanded the discussion on how call-backs relate to trip negotiation requirements.

We added clarifications to the section on negotiating trip times. Transit agencies are permitted to establish a reasonable window around the negotiated pickup time, during which the vehicle is considered “on time.” We explained that FTA considers pickup windows longer than 30 minutes to be unacceptable, as they cause unreasonably long wait times for service. We also included examples to describe the 30 minute window.

A few comments regarding “no strand” policies sought clarification on the sentence that suggested providing a return trip, “even if later than the original schedule time,” and requested FTA to state the “no strand” policies are optional. We edited the sentence to specify these policies are optional and that the return trip will typically be within regular service hours.

We received several comments on paratransit fares. A few commenters were concerned about the fare rules regarding how to choose between the minimum alternative base fares for paratransit when there is more than one fixed route option. We clarified by adding Appendix D language specifying that the agency chooses the mode or route that the typical fixed route user would use. A few commenters questioned whether transit agencies using distance based fares on fixed route are required to vary paratransit fares as well. We clarified that transit agencies are not required to use distance based fares on paratransit, but must set the fares at no more than double the lowest full-price fixed route fare for the same trip. One commenter requested the citation for the regulatory requirement to provide free paratransit trips in situations with free fare zones. We provided the relevant regulatory citation. Another commenter suggested it should be pointed out that agency trips, or fares negotiated with social service agencies or other organizations, can be more than double the fixed route fare. We made this change. We also added text stating that FTA finds monthly passes on fixed route are considered discounts, and, therefore, cannot be used to calculate the maximum paratransit fare, which is capped at double the full-price fixed route fare.

We received a number of comments regarding capacity constraints. A commenter requested clarification on the meaning of considering “two closely spaced trips by the

same rider so they do not overlap” during scheduling. We added an example of when this occurs to better explain that scenario. Another commenter requested clarification that it is not a waiting list, and, therefore, not a capacity constraint, to tell riders they will provide the trip, but then state the transit agency will call back before “X” p.m. to give a precise time to the rider. We added language to more clearly explain what is and what is not a waiting list. We also added text specifying that as long as the call-taker accepts the trip request and confirms the requested time with the rider, this is not a waiting list.

Within the topic of capacity constraints, there were many comments on untimely service. On the topic of pickup windows, one commenter expressed it is important to point out that if the local agency has instituted a 5-minute waiting period for paratransit pickups, the 5 minute wait cannot begin until the start of the pickup window. The text in the final Circular states this explicitly. In addition, there were several comments on assessing on-time performance. One commenter requested a clarification of what “on-time” means, and whether this includes only the 30 minute window or also early pickups. We edited the language to express that on-time is only within the 30-minute window, but service standards may evaluate on-time pickups and early pickups together by setting a goal of “X” percent of pickups will be on-time or early. Another commenter requested we include a standard for “very early pickups” in the Circular. While we did not add a specific standard, we provided examples of service standards some agencies have instituted for very early pickups.

There were several comments on trip denials and missed trips. Regarding trip denials, one commenter expressed that when a trip is actually made, it cannot be counted as a denial, referring to DOT’s September 2011 amendments to the regulation. We agree

with the commenter, and clarified the language and linked to the preamble to the amendments. Regarding missed trips, we added more clarification on what constitutes a missed trip and provided examples. One commenter suggested it would be a good practice for dispatchers to ask drivers to describe the pickup location and document the description in case a no-show is later questioned. We added the requested language. Another commenter requested substantiation for stating that a transit agency with a high rate of missed trips may not be able to arrive on time, possibly indicating the need to add capacity. We substantiated this statement based on complementary paratransit reviews completed by FTA's Office of Civil Rights.

A few commenters stated that untimely drop-offs and poor telephone performance are not mentioned in the regulations, and are therefore only good practices and should be presented as such. We clarified why we consider these actions capacity constraints under the regulations, and, therefore, a requirement to ensure a transit agency is not allowing these situations to occur, and tied it to the relevant regulation at section 37.131(f)(3)(i).

There were many comments about poor telephone performance, including call wait times and busy signals. One commenter requested we more directly address long hold times, and we clarified this section to focus more clearly on long hold times. A couple of commenters stated it is unclear what specific telephone hold times are required without actual numbers of minutes or percentages, and recommended FTA adopt a best practice standard for maximum hold times of two minutes. We did not set absolute maximum hold times; however, we added optional good practices of setting certain thresholds, and provided examples. For example, "an optional good practice is to define a minimum percentage (e.g., X percent) of calls with hold times shorter than a specific

threshold (e.g., two minutes) and a second (higher) percentage (e.g., Y percent) of calls with hold times shorter than a longer threshold (e.g., five minutes).” We also added optional good practices for measuring averages over hourly periods. One commenter requested the Circular state that a rider should never encounter a busy signal, other than in rare emergency situations. FTA did not state explicitly that a rider should never encounter a busy signal, but we added recommendations about using telephone systems with sufficient capacity to handle all incoming calls, providing suggestions of how to avoid busy signals, and stating that excessive wait times and hold times would constitute a capacity constraint.

One commenter asked why steering eligible individuals to different services would be considered discouraging the use of complementary paratransit if the other service might serve the individual better. We deleted references to “steering” in the document and instead added language to clarify that while transit agencies may not discourage use of ADA complementary paratransit, which is a capacity constraint, it is a good practice to make people aware of their transportation options so they can make informed decisions. Making sure people are aware of their transportation options so that they can make informed decisions is very different from discouraging paratransit use. We added text stating FTA encourages agencies to coordinate their services with other services available to individuals with disabilities.

Numerous commenters suggested that as long as an agency doesn’t have capacity constraints, there should not be a limit on subscription service to 50 percent of an agency’s paratransit service. While this language was included in the proposed Circular, in the final Circular we clarified the language, and added language stating FTA

encourages transit agencies to maximize use of subscription service as long as there are no capacity constraints.

One commenter noted will-call trips should be premium services, and asked for clarification. We edited the text to reflect that will-call trips are premium services and added them to the list of premium service provided in the, “Exceeding Minimum Requirements (Premium Service)” section. We also clarified in the earlier sections that will-call trips may be restricted by trip purpose and transit agencies may charge higher fares for these trips.

Regarding complementary paratransit plans, a few commenters requested FTA provide reasons for requiring a plan when a system is not in compliance, and why there is no requirement for compliance with paratransit on the first day of a fixed route service. We edited the text in line with the regulations and FTA policy requiring implementation of complementary paratransit immediately upon introduction of a fixed route service, and not over time. Additionally, we added the regulatory support for requiring a complementary paratransit plan when a transit system is not in compliance with its paratransit obligations.

A commenter suggested the section on public participation add a “good practice,” stating when a transit agency proposes a reduction in service, the transit agency should consider a review similar to a Title VI analysis. We clarified that under 49 U.S.C. 5307 there are requirements for public comment on fare and service changes, and a major reduction in fixed route service must also include consideration of the impact on complementary paratransit service.

We received many comments regarding the “Monitoring and Data Collection” section of this chapter, generally questioning the value of this section to the reader. Upon review, we concluded that many of the points were repetitive of earlier sections and removed the section from the Circular.

J. Chapter 9 – ADA Paratransit Eligibility

Chapter 9 discusses ADA paratransit eligibility standards, the paratransit eligibility process, the types of eligibility, recertification, and appeals processes, no-show suspensions, and issues involving personal care attendants and visitors.

Several commenters asked for clarification on the dilemma between having mobility device weight restrictions and paratransit eligibility. We clarified that ADA paratransit eligibility is based on an individual’s functional ability, and while the size or weight of a mobility device exceeding the vehicle’s capacity is not grounds to reject paratransit eligibility, in some cases, an individual will be granted eligibility, but cannot be transported on a transit agency vehicle. We added language stating the vehicle capacity should be communicated to the rider, and the individual’s eligibility will be maintained, so if the individual later obtains a smaller or lighter mobility device, he or she will be able to be transported.

A few commenters inquired regarding the role of the age of children in paratransit eligibility. One commenter suggested specifying that policies limiting the availability of transit service to children cannot be imposed solely on the paratransit system. Another commenter stated an agency’s fare policies should not be indicative of a child’s ability to travel on fixed route, and a reasonable person standard should apply: whether a child can travel independently without the assistance and supervision of an adult is set not to a

certain age, but to what a reasonable person would conclude. Several commenters asserted these policies should be decided at the local level because eligibility requirements must be “strictly limited” and based solely on “an individual’s ability.” We clarified the language to state transit agencies can set requirements on what age children must be accompanied by an adult based on the age a child is able to use fixed route independently. This age requirement must be uniform across fixed route and paratransit. We also clarified that fare policies alone, such as providing that children under a certain age ride free, or children accompanied by an adult ride free, do not set a requirement for a child to be accompanied by an adult, and, therefore, do not extend to paratransit policies.

One commenter wondered why a discussion of individuals with psychiatric disabilities who may not be able to travel in unfamiliar areas would be found paratransit eligible under two different categories of eligibility. We clarified that these individuals may be eligible for multiple reasons.

One commenter stated that eligibility based on current functional ability may lead to confusion about impairment-related conditions that vary from time to time. We added language stating it would be inappropriate to deny eligibility to someone with a variable disability if the assessment happened to take place on a “good day,” and transit agencies should consider that an individual’s functional ability may change from day to day because of the variable nature of the person’s disability.

One commenter requested FTA note the qualification for a half-fare discount under 49 U.S.C. 5307 for seniors and riders with disabilities does not have a bearing on one’s complementary paratransit eligibility. We added a section explaining that the standards for half-fare eligibility are different from the paratransit eligibility

requirements, and half-fare eligibility does not automatically give the rider ADA paratransit eligibility.

There were a few comments regarding conditional paratransit eligibility. Commenters emphasized that in the section discussing the necessity for conditional eligibility for individuals where hot or cold weather exacerbates their health conditions to the point that they are unable to use fixed route, it should be clarified that it is the local agency's decision what the temperature thresholds are. We added a footnote explaining that the Circular text provides specific examples of temperatures where it may be "too hot;" establishing different thresholds for specific regions is appropriate because climates vary from region to region. Another commenter noted conditional eligibility should not be limited based on trip purpose. We added text specifying that giving eligibility to individuals for "dialysis trips only" is not appropriate, but granting eligibility to an individual who is suffering from severe fatigue from a medical condition or treatment is appropriate.

A commenter requested FTA clarify that while confidentiality in paratransit eligibility is vital, agencies can still tell drivers that riders need particular types of assistance. We added text noting an optional good practice for transit agencies is to add necessary information to the manifest that the operators may need to safely serve the rider, without including specific information on the nature of the rider's disability.

Regarding the eligibility determination process, we emphasized that local agencies devise the specifics of their process, including how and when they will conduct functional assessments, within the broad requirements of the regulations. One commenter requested the Circular go more in depth on having assessments conducted by

professionals trained to evaluate the disabilities at issue. We added text, including support from Appendix D, stating while the ultimate determination is a functional one, medical evaluation from a physician may be helpful to determine the ability of the applicant, particularly if a disability is not apparent. We also stated that the professional verification is not limited to physicians, but may include other professionals such as mobility specialists, clinical social workers, and nurses, among others. Several commenters requested specific guidance regarding appropriate assessments and eligibility applications, including sample applications and assessments. We provided links to Easter Seals Project Action, which provides information on implementing functional assessments, administering the Functional Assessment of Cognitive Transit Skills (FACTS), and other technical assistance materials.

A couple of commenters suggested adding information regarding making applications available in alternative formats. We added relevant language from Appendix D regarding alternative formats and deleted the suggestion that transit agencies ask applicants if they want future communications in alternative formats to prevent a reader from concluding that providing an accessible format is optional when a rider needs it. We also added information regarding the Title VI Limited English Proficiency (LEP) requirements for complementary paratransit, which ensure that those who do not speak English as their primary language can access paratransit services. This was added for consistency with a similar section in Chapter 8.

One commenter indicated the content on identification cards for paratransit eligibility should be left to local agencies. We clarified that the decision of whether to have identification cards and the content on them are local decisions, but if the card does

not contain all the information required by section 37.125(e) (e.g., name of passenger, name of transit agency, limitations or conditions on eligibility, etc.), then letters of determination with the required information must be provided to the passenger.

We clarified that FTA considers any determination less than unconditional eligibility, such as conditional and temporary eligibility, to be forms of ineligibility. Therefore, transit agencies must send letters regarding appeals to any applicant that receives any type of eligibility less than unconditional eligibility.

There were several comments regarding recertification. One commenter requested clarification of what is a “reasonable interval” between eligibility determination and recertification. We added language from Appendix D explaining that requiring recertification too frequently would be burdensome to riders. Another commenter requested information regarding what steps a transit agency should take for recertification under a new or revised process. We added language encouraging agencies to consider the impact on riders when they tighten eligibility processes.

There were many comments regarding the paratransit eligibility appeals process. We noted that transit agencies must inform riders they have the right to appeal any eligibility denial and added text explaining that riders can reapply for eligibility at any time. Many of these commenters stated the draft text encouraging transit agencies to provide free transport to and from paratransit appeals was not appropriate, and it was not required, and, therefore, should not be included in the Circular. A few comments supported FTA’s inclusion encouraging free transport to and from paratransit appeals. While it was only a recommendation, we removed the text encouraging free transport,

instead encouraging agencies to “ensure that hearing locations are easy for appellants to reach.”

Another commenter indicated the draft text was ambiguous regarding transit agencies arranging appeals without unreasonable delays. We clarified the statement by recommending that, although the regulations do not specify a deadline for which agencies must hold an in-person appeal after an applicant requests a hearing, FTA encourages transit agencies to hold the appeal hearings promptly and suggests that hearings be held within 30 days of the request. A couple of commenters requested clarification regarding who can be on an appeals panel, specifically requesting FTA to specify that although someone hearing an appeal should not represent one particular point of view, it is acceptable to have an impartial employee of the transit agency participate in the appeals hearing. We edited the text to note if transit agency staff or members of the disability community are selected to hear paratransit eligibility appeals, it is important for them to remain impartial.

There were many comments regarding personal care attendants (PCAs). A couple of commenters noted the terminology was inconsistent throughout, and requested the references to “personal attendants” be changed to “personal care attendants.” We edited the relevant text in Chapters 8 and 9 to consistently reference “personal care attendants.” Many commenters questioned the draft text stating that if a rider needs a PCA during the eligibility process that may be an indication the paratransit rider must be “met at both ends of the trip” and “never left unattended.” Commenters argued the language was inaccurate because there is no requirement for a paratransit rider not to be left unattended or met at both ends of the trip. We deleted this sentence as it was inconsistent with the

regulations and policy, and clarified that a transit agency cannot impose a requirement for a rider to travel with a PCA. We also clarified the reasoning for asking during the eligibility process whether a complementary paratransit applicant needs a PCA or not, which is to “prevent potential abuse” of the provision. By documenting a rider’s need for a PCA during the eligibility process, the agency can determine if an individual traveling with the rider is a PCA or a companion, which in turn simplifies determining required fares. One commenter noted the regulation is singular, and, therefore, transit agencies are only required to provide each paratransit eligible rider with one PCA. We amended the language to state each rider is only entitled to travel with one PCA. Likewise, another commenter asked FTA to clarify that while transit agencies are required to accommodate only one companion per paratransit eligible rider, the regulations also require the transit agency to accommodate additional companions if space is available. We added text reflecting this requirement. A few commenters requested that FTA reword the sentence saying transit agencies are encouraged to “make it easy for riders to reserve trips with PCAs and not require that they re-apply” if they previously did not need a PCA and now require one. We deleted this sentence as it did not add value as a recommendation.

We received several comments praising regional paratransit eligibility approaches and encouraging FTA to support this concept. In response, we added a section entitled, “Coordination of Eligibility Determination Processes,” and stated FTA encourages transit agencies to coordinate eligibility determinations to make regional travel easier for customers.

There were many comments regarding no-show suspensions. One commenter requested that the Circular provide specific guidance on how suspensions for no-shows

should be calculated, and what constitutes a no-show outside the passenger's control. We addressed these items by providing the regulatory text and examples of when no-shows are outside the passenger's control, and providing examples of no-show policies that lead to suspensions. We also added language specifying that agencies are permitted to suspend riders who establish a pattern or practice of missing scheduled trips, but only after providing a rider with due process. In the case of no-show suspensions, due process means first notifying the individual in writing of the reasons for the suspension and of their right to appeal as outlined in section 37.125(g). We also added language specifying the purpose of no-show suspensions, which is to deter chronic no-shows. We explained that transit agencies must consider a rider's frequency of use in order to determine if a pattern or practice of no-shows exist and recommended a two-step process for determining pattern or practice. We also clarified that FTA recommends the no-show suspension notification letters inform riders that no-shows beyond their control will not be counted, and we provided examples of how riders can explain the no-shows outside of their control. We recommended transit agencies have "robust procedures" to verify the no-shows were recorded accurately.

Many of the comments on the topic of no-show suspensions challenged the proposed Circular statement, "FTA considers suspensions longer than 30 days to be excessive under any circumstance." Commenters argued this is not based in regulation, and in some instances, suspensions longer than 30 days are necessary for repeat offenders of the no-show policy. We edited this text to state, "While it is reasonable to gradually increase the duration of suspensions to address chronic no-shows, FTA generally considers suspensions longer than 30 days to be excessive." We also added language

clarifying that FTA requires suspensions to be for reasonable periods, and FTA considers up to one week for a first offense to be reasonable.

One commenter requested clarification regarding when an applicant can independently and consistently “remain safe when traveling alone.” The commenter noted this contradicts an earlier statement in Chapter 9 that general public safety concerns are not a factor in paratransit eligibility. In the final Circular, we have clearly distinguished between general public safety concerns, such as traveling at night or in high crime areas, from an individual’s personal safety skills, such as an individual whose judgment, awareness and decisionmaking are significantly affected by a disability and who would therefore be at unreasonable risk if they attempted to use the fixed route independently.

K. Chapter 10 – Passenger Vessels

Chapter 10 discusses nondiscrimination regulations related to passenger vessels, including accessible information for passengers of passenger vessels, assistance and services, and complaint procedures.

Chapter 10 remains substantially similar to the proposed chapter, with the primary exceptions of technical corrections and clarifications, and the addition of a few Part 39 provisions that were not included in the proposed chapter, but which commenters pointed out were relevant.

Many commenters inquired as to which passenger vessel operators (PVOs) were addressed by the Circular. We edited the text to more clearly reflect which PVOs the Circular addresses. One commenter requested that we clarify whether Part 39 applies to only U.S. ships or also foreign flagged vessels. We edited the text to make clear the

Circular does not address U.S. or foreign flag cruise ships. One commenter also pointed out that with respect to private PVOs operating under contract to public entities, a dock that received Federal financial assistance would not fall under PVO rules if the vessel was not covered. In response, we removed the term “and facilities” from the section discussing services using vessels acquired with FTA grant assistance.

Several commenters also responded to the Part 39 nondiscrimination provisions. A few commenters suggested the sentence stating that passengers with disabilities cannot be excluded from participating or denied the benefits of transportation solely because of their disability was an inaccurate interpretation of the regulations because individuals with disabilities can be excluded from PVOs for many reasons based on their disabilities. The commenters also challenged the draft text regarding what PVOs cannot do, for example, require medical certificates or advance notice of travel from passengers with a disability, because under certain conditions PVOs can require these. While operators of public ferry service, in practice, would rarely if ever deny service on these grounds, we added sections discussing the applicable regulations, including refusing service to individuals with disabilities (10.2.2), refusing service based on safety concerns (10.2.3), requiring passengers to provide medical certifications (10.2.4), limiting the number of passengers with disabilities on vessels (10.2.5), and requiring advance notice from passengers with disabilities (10.2.6).

One commenter noted that in the section regarding auxiliary aids and services, the proposed Circular included a statement that passengers needing a sign language interpreter should make this request early. The commenter asked for this to be deleted because PVOs are not required to provide sign language interpreters. We deleted this

sentence because the types of trips addressed by this Circular are generally short and individuals would not require sign language interpreters.

Regarding service animals, one commenter noted the regulations and definitions for service animals in the DOT (49 CFR Part 39) and DOJ (28 CFR Part 36) regulations are confusing because they are different, and PVOs are often unsure which to follow. We clarified that the service animal definition for DOT in Part 39 in the water transportation environment is different from DOT's Part 37 definition. We included a link to guidance regarding ADA requirements for passenger vessels that addresses service animals, which explains that DOT interprets the service animal provisions of Part 39 to be consistent with DOJ's service animal provisions.

Similarly, we clarified that the relevant regulations and definition for wheelchairs and other assistive devices on passenger vessels are also found in Part 39, and different from the definitions provided in Part 37.

L. Chapter 11 – Other Modes

Chapter 11 discusses other modes, including the general requirements for vehicles not otherwise mentioned in the Circular or covered by Part 38, as well as mode-specific requirements for certain types of vehicles. Vehicles referred to in this chapter include high-speed rail cars, monorails, and automated guideway transit, among other systems.

This chapter is considerably shorter than the proposed chapter. One of the few comments we received noted the chapter lacked discussion. We agreed with the comment, and in the absence of recommendations for tailoring the chapter, we removed several sections that were largely composed of lists referring to regulatory sections and

instead broadly summarized the requirements and directed the reader to the regulations for the specific technical information.

M. Chapter 12 – Oversight, Complaints, and Monitoring

Chapter 12 discusses FTA’s oversight of recipients and enforcement processes, onsite review information, and complaint process. It also discusses requirements and suggestions for the transit agency complaint process, and requirements and suggestions for transit agency monitoring of its services. Chapter 12 remains substantially similar to the proposed chapter, although we made changes based on DOT’s issuance of the reasonable modification final rule and in response to comments.

The DOT final rule on reasonable modification amended the longstanding local complaint procedure requirements in 49 CFR 27.13, and then mirrored that provision in a new section 37.17. The rule added specific requirements that transit agencies must incorporate into their complaint procedures. For example, agencies must now sufficiently advertise the process for filing a complaint, ensure the process is accessible, and promptly communicate a response to the complainant. We revised sections to capture these new requirements, quoting the new regulatory text. We also edited slightly the Sample Comment Form attachment to illustrate how agencies may use such a form to collect ADA complaints consistent with the final rule.

We received several specific comments on the chapter. One commenter suggested that viewing compliance review reports are helpful to improve service delivery. In response, we added a link to our Civil Rights Specialized Reviews webpage on the FTA website. Another commenter noted while the Circular discusses finding agencies

“compliant,” what FTA actually does is find that agencies lack deficiencies. We edited the text to incorporate the deficiency focus.

One commenter, discussing FTA’s administrative enforcement mechanisms, stated that FTA should not be interpreting the provisions of 49 CFR 27.125, which provides steps FTA can take in response to deficiencies. Another commenter noted the Circular should not discuss suspension or termination of financial assistance, or alternatively consider intermediate steps such as voluntary arbitration or mediation, because suspension and termination are contrary to FTA’s goals. In response, we restated the regulatory requirements for suspending or terminating Federal financial assistance.

Regarding FTA grant reviews, one commenter requested that the section be revised to offer guidance on the content of the reviews, including the scope of the reviews and how to prepare for them. Upon consideration, we have removed this section from the chapter, since grant reviews are not part of our oversight program.

There were several comments regarding the FTA complaint process. We clarified that FTA also processes ADA complaints against non-grantees in accordance with Part 37 and added the relevant Appendix D language for explanation. Commenters noted that complaint decision letters are only relevant to specific situations and are not legally equivalent to regulations, and suggested FTA clarify the responses are only applicable to specific situations and do not create new requirements. In response, we explained that complaint determinations are applicable only to specific facts in question and are not necessarily applicable to other situations and that references to complaint responses in the Circular serve as illustrative examples of how regulations were applied by FTA in specific instances.

In response to a comment requesting that FTA notify the grantee whenever a complaint is filed against it, we explained that we contact the grantee when we investigate a complaint and noted our discretion for accepting complaints for investigation. We also added a section explaining the criteria FTA uses to close complaints administratively, a process that typically does not include outreach or notification to the grantee. The administrative closure bases were taken from FTA's Title VI Circular and are consistent with how FTA closes cases across its civil rights programs.

A few commenters noted requiring corrective action based on deficiency findings within 30 days of receipt of the corrective action letter is not required by regulations and is inappropriate. We edited the text to clarify FTA typically requests a response from the transit provider within 30 days outlining the corrective actions taken or a timetable for implementing changes—if correcting a deficiency takes longer, a timetable for corrective action is appropriate.

There were several comments regarding the transit agency complaint processes. One commenter requested guidance regarding methods transit agencies can take to resolve customer complaints. As a result of the new complaint process requirements for transit agencies provided in the final rule on reasonable modification, we added information regarding the transit agency complaint process. Several of the new sections directly respond to this comment by providing additional information regarding how local transit agencies can act to resolve complaints, including information regarding designation of a responsible employee for ADA complaints, changes to the requirements regarding complaint procedures, and communicating the complaint response to the complainant. We also added language cautioning transit agencies against directing local

complaints to contracted service providers for resolution, as it is the agency's responsibility for ADA compliance. In addition, we provided additional guidance highlighting that agencies can use the same process for accepting and investigating ADA and Title VI complaints.

We emphasized that local transit agencies have flexibility to establish the best formats for receiving ADA complaints, and provided information regarding different formats agencies may choose to use.

A commenter requested additional guidance regarding publishing the name of the designated ADA coordinator. We clarified that while an individual must be designated as the "responsible employee" to coordinate ADA compliance, the individual can be publicized by title as opposed to by name, for example, "ADA Coordinator." Another commenter provided a list of information that could be helpful in investigating complaints. We incorporated the list into an already existing list.

Several commenters argued broadly that monitoring is not required in the regulations, and, therefore, FTA cannot impose the requirement on local agencies. Similar comments were made specific to Chapter 12. We added language in Chapter 12 noting that transit agencies must monitor their service in order to confirm internally, and in some cases to FTA during oversight activity, that service is being delivered consistent with ADA requirements. Recipients must similarly ensure compliance of their subrecipients. However, we also state clearly that FTA does not dictate the specifics of an agency's monitoring efforts and that approaches for monitoring will vary based on the characteristics of the service and local considerations. This is our main point when it comes to monitoring. We therefore shortened the section and removed portions we

determined were overly broad since we did not receive feedback to tailor the discussion to local practices. We retained the table that cross-references monitoring discussions found in other chapters to assist the reader in locating the information.

Therese W. McMillan
Acting Administrator

[FR Doc. 2015-25188 Filed: 10/2/2015 08:45 am; Publication Date: 10/5/2015]